

**CORRECTED LAMONT PUBLIC UTILITY DISTRICT'S
SUPPLEMENTAL PETITION AND RESPONSE TO
MARCH 23, 2012 TENTATIVE ORDER
OF REGIONAL WATER QUALITY CONTROL BOARD
(REGIONAL WATER BOARD)**

Lamont Public Utility District, pursuant to Water Code § 13320 and otherwise, provides this further response and Petition in response to the March 23, 2012 Tentative Order of the Regional Water Board (Tentative Waste Discharge Requirement in Cease and Desist Order).

1. Name, address, telephone number, and e-mail address of Petitioner:

Petitioner is Lamont Public Utility District whose address for purposes of this Petition is as follows:

Larry F. Peake, A Professional Law Corporation
Attorney for Lamont Public Utility District
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2. Action of Regional Water Board Petitioned:

Tentative Order and Notice of Tentative Waste Discharge Requirements and Cease and Desist Order of March 23, 2012 of Central Valley Regional Water Quality Control Board, W. Dale Harvey, Senior Engineer as certified by Executive Officer Pamela C. Creedon, such Tentative Order consisting of 31 pages with multiple attachments and exhibits in total consisting of approximately 60 pages and requirements proposed to be imposed thereon upon the Lamont Public Utility District including, but not limited to, obligation to acquire property by purchase of long term lease for additional Use Area, completion of CEQA documentation, and other obligations as imposed beginning December 7, 2012 and continuing

through June 9, 2014; a copy is not included due to the volume of materials and impediments upon its being provided by e-mail back to the Central Valley Regional Water Control Board, but referenced in 4:29 p.m. e-mail of March 23, 2012 from W. Dale Harvey at dh Harvey@waterboards.ca.gov.

3. The date of action by the Regional Water Board:

The date of action by the Regional Water Board is March 23, 2012, with a reference beginning date of March 26, 2012.

4. A Statement of Reason to Action was inappropriate or improper:

The proposed action is inappropriate, in summary, but not limited to, the following:

Lamont Public Utility District was authorized by the Regional Water Board to supply its effluent to Community Recycling & Resource Recovery, Inc. (Community Recycling) through and including a process involving composting by Community Recycling on lease hold property provided by Lamont Public Utility District as fee owner and Community Recycling as the lessee on or about 1993, which such process was subject to CEQA review and compliance. Lamont Public Utility District and its constituents have utilized the agreed upon process and procedure to provide sewer services to its constituents at rates commensurate and consistent with the economic resources of such constituents. Recent events on or about October 12, 2011 involving the tragic deaths of two youths on properties located outside the composting area which has been the source of zoning regulations through a conditional use permit imposed by the County of Kern upon Community Recycling. Those claims and issues are distinct from jurisdictional issues of the Water Board particularly where, as here, the issues raised by the October 12, 2011 incident are within the jurisdiction of Cal-OSHA and have been addressed by Cal-OSHA with Community Recycling. A Stay of the attempt by the County of Kern attempting to revoke the conditional permit has been issued by the Honorable Eric Bradshaw of Kern County

Superior Court, and that Stay has been and remains in place to fully protect the ability of Lamont Public Utility District to provide its effluent to Community Recycling for the foreseeable future. In such regard, it would be noted that there is no Administrative Record which has yet been prepared by the County of Kern. There is not as yet, consequently, in place a briefing schedule nor any evidentiary hearing yet scheduled or pending in Kern County Superior Court Case Number 275272-EB. It is not estimated by the undersigned that an evidentiary hearing will occur in the Kern County matter until the first part of 2013. It is the opinion of the undersigned that there is a substantial probability that the County's attempt to revoke Community Recycling's conditional use permit, which has successfully remained in place for approximately twenty years, will continue to remain in place until termination of the existing leasehold between Lamont Public Utility District and Community Recycling.

It is further inappropriate for the Water Board to mandate that the citizens of Lamont through Lamont Public Utility District, hold a Proposition 218 vote, effectively mandate/force/require the citizens to affirmatively vote in favor of a fee increase in their monthly sewer rates that, from engineering cost previously submitted, would double and perhaps triple existing residential equivalency rates of \$15.40 per household, particularly where, as here, the economic base and resources for citizens of Lamont makes such fee increase an onerous and oppressive, and effectively denies the citizens from a free choice on a Proposition 218 vote. The action of the Water Board is further inappropriate as it mandates that a substantial expenditure estimated as potentially at \$8 million to \$10 million, to be expended by the citizens of Lamont through its Public Utility District prior to an evidentiary hearing in the above reference Kern County Superior Court pending matter and a determination by the Honorable Eric Bradshaw on the appropriateness of Kern County attempting to revoke Community Recycling's conditional use permit. The proposed action by the Regional Water Board is further inappropriate in that it requires a Prop 218 vote and the obtainment of only one source of compliance as an alternative to the continued use of Lamont's effluent for composting (e.g., that land be leased or purchased by Lamont, as opposed to use of percolating ponds, treatment plant, or

other means of effluent treatment, should, in the hypothetical and unlikely occurrence, that Community Recycling's conditional use permit be revoked.

The Board's action is also inappropriate with respect to the time line proposed of December 7, 2012 for the submittal of the technical report which is required to include an implementation schedule for Use Area expansion project; and the December 9, 2013 date imposed for the acquiring by purchase or long term lease of additional Use Area, as well as the remaining time line set forth in the Cease and Desist Order R5-201-2-XXXX at page 7, subsections "c" through "e" thereof. Such dates effectively vitiate the due process rights of Lamont Public Utility District to its day in court and right to an evidentiary hearing on the County's proposed conditional use permit revocation as pending in the above reference Kern County Superior Court case.

The Board's proposed action is also inappropriate where, as here, Lamont Public Utility District has been unable to find any authority or previous historical imposition by the Regional Water Board upon any other governmental agency that a "back up" or alternative effluent disposal site exist. By way of example, the City of Bakersfield disposes of effluent on approximately 5,000 acres of property located to the west of Lamont Public Utility District's ponds. Those 5,000 acres held by the City of Bakersfield, and upon which the City of Bakersfield is dependant, are believed to be within a flood zone and are subject to potential catastrophic loss in the event of flood waters onto such 5,000 acres. Lamont Public Utility District is informed and believes that the Regional Water Board has not mandated that the City of Bakersfield expend substantial sums in multiple millions of dollars to obtain 5,000 alternative acres of property required to be located outside a flood zone in the anticipated occurrence of flood waters mitigating or eliminating the City of Bakersfield's ability to utilize such 5,000 acres for effluent disposal.

5. How Petitioners are grieved:

People of Lamont, through its Public Utility District, and the Lamont Public Utility District itself will be imposed, by the proposed order, with the obligation –in denial of Lamont Public Utility District’s due process to a full hearing in the above referenced Kern County Superior Court action– to, inter alia:

1. Hold a Proposition 218 hearing which, in order to comply with the Tentative Order, force citizens of Lamont to vote in favor of an onerous increase in residential equivalency sewer rates of perhaps double or even triple existing rates of \$15.40 per residential equivalency;
2. Force the district and its constituents, consisting of approximately 15,000 individuals through 4,000 residential units, to incur potentially \$8 million to \$10 million worth of costs to obtain property necessary as a possible/hypothetical “back up” or “alternative” to Community Recycling particularly where, as here, the revocation of the conditional use permit in question is not only speculative, but clearly unlikely ever to occur;
3. Effectively the prejudice and revoke from Honorable Eric Bradshaw his right and authority to make a determination on the County of Kern’s proposed revocation of Community Recycling’s conditional use permit.

6. Action the Petitioner requests the State Water Board to take:

Lamont Public Utility District, on behalf of the citizens of Lamont and constituents of Lamont Public Utility District, requests that the Tentative Order be withdrawn in its entirety; or, the alternative, that each of the proposed dates referenced in the Tentative Order on pages 6 and 7 be extended by a period of twelve months so as to allow Lamont Public Utility District to have its due process rights to a full evidentiary hearing in the above referenced Kern County Superior Court action.

7. Authorities for legal issues raised in the Petition and reference to documents and hearing transcripts:

Lamont Public Utility District refers to and incorporates herein by reference and requests Judicial Notice pursuant to Evidence Code § 451 and 452 of Kern County Superior Court case number S-1500-CV-275272-EB and the Administrative Record which is in the process of being prepared as mandated and imposed upon the County of Kern consistent with the due process requirements inuring to the benefit of Lamont Public Utility District, and the CEQA documentation relating to the discharge of effluent by Lamont Public Utility District on its lease property to Community Recycling, and historical documentation, including authorizations and considerations by the Regional Water Board dating back to on or about 1993 approving the present process and the closing procedure should Community Recycling not be able to continue to take Lamont Public Utility District's effluent.

Lamont Public Utility District further references WZI's prior submittals to the Regional Water Board regarding the closing process which will be utilized, including as to time for compliance, by Community Recycling and Lamont Public Utility District in the event Community Recycling no longer continues to operate a composting facility which takes Lamont Public Utility District's effluent. Lamont Public Utility District further references submittals by Community Recycling and WZI in conjunction with present Tentative Order and Lamont Public Utility District's previous submittals between 1992 through the present to the Regional Water Board.

Such submittals include, and incorporation by references made, to such Points and Authorities as are contained in the above referenced materials, including the pending Kern County Superior Court case including, but not limited to, the issuance of the Stay Order by the Honorable Eric Bradshaw.

8. Statement that copies of Petition have been sent to the Regional Water Board:

This statement is being sent to the Regional Water Board by e-mail consistent with

instructions as provided to the staff of the undersigned.

9. Statement that the issues raised in the Petition presented to the Regional Board before the Regional Board acted:

Regional Board, through its representatives, have been fully and previously advised, and are being advised herein, of the position of the Lamont Public Utility District.

REQUEST FOR EVIDENTIARY HEARING:

Lamont Public Utility District requests an evidentiary hearing.

Lamont Public Utility District's summary of arguments is as said forth above at paragraphs four through six and are incorporated herein by reference.

Evidentiary submittals intended to be offered at the hearing include testimony of witnesses in support of Lamont Public Utility District, which such live testimony, subject to direct and cross-examination, cannot be submitted in the form of a written Petition. Such hearing and testimony is required to provide Lamont Public Utility District, on behalf of the citizens of Lamont and its constituents, with due process rights consistent with those set forth in the above reference Kern County Superior Court case and Writ, including, but not limited to, Code of Civil Procedure § 1094.5.

Request that action be held in advance:

It is requested by Lamont Public Utility District that any proposed action by the Regional Water Board be held in abeyance up to two years in order to protect the rights of the citizens of Lamont and Lamont Public Utility District through its constituents.

Respectfully submitted,

Date: April 28, 2012

WALL, WALL & PEAKE

by: 

Attorneys for Lamont Public
Utility District